COURT No.10

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 22 of 2006

United India Insurance Company Ltd.
Through its Divisional Manager,
Divisional Office Nainital Road, Tikonia,
Haldwani, District Nainital.

… **Appellant.**

Versus

1. Smt. Devaki Wife of Shri Laxmi Dutt Dwivedi,
2. Sri Laxmi Dutt Dwivedi S/O late Gumani Dutt Dwivedi,
   Both residents of village Bamangaon, Post Office Qwiti,
   Tehsil Munsyari, District Pithoragarh. (Claimants)
3. Shri Kalyan Singh Rana, S/O Gopal Singh Rana,
   Resident of village Manjkot, Tehsil Munsyari,
   District Pithoragarh. (Owner of Vehicle No. UA 05/960)

… **Respondents.**

Sri Pankaj Purohit, learned counsel for the petitioner.
Sri G.B.Pande, Adv. learned counsel for the claimant-respondents.

With

Cross Objection No. 3761 of 2006

Smt. Devaki W/O Sri Laxmi Dutt Dwivedi and another
… **Claimant-respondents**

Date April 03, 2006

PC : Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and award, dated 24-10-2005, passed by the Motor Accidents Claims Tribunal/District Judge, Pithoragarh ***(in short the Tribunal)***, in M.A.C. Case No. 78 of 2003, Smt Deoki Devi and another Vs. Kalyan Singh and another, whereby the learned Tribunal has allowed the claim petition and decreed the claim for compensation of Rs. 87,000/-. The learned Tribunal has also put a rider of interest in case the payment of compensation is not made

within a period of two months by the Insurance Company, it shall be liable to pay interest @ 7% per annum from the date of application till payment. Aggrieved, the Insurance Company-appellants has come up in appeal. On the other hand, the claimant-respondents have filed cross-objection in this appeal for enhancement of compensation amount, which shall be dealt with in the later part of the judgment at appropriate place.

Brief facts of the case are that deceased Gokulanand lost his life on 20-9-2003 in a motor vehicle accident involving Jeep No. UA 05/960 due to rash and negligent driving by its driver. According to the petitioners, Gokula Nand (son of the claimants) started his journey from Qwiti to Thal by the ill-fated Jeep at about 9 a.m. As soon as the said jeep reached near Kakarsem bend, it went off the road and rolled down in to Jakula river with the result Gokulanand Dwivedi sustained grievous injuries and considering his critical condition he was taken to Primary Heath Centre Tejam where in the course of treatment, he died. The Post Mortem of the dead body was conducted the same day. The deceased was aged 22 years and was an expert in gardening and growing of herbal plants and he was earning Rs. 5000/- per month. The deceased used to give Rs. 3000/- for his domestic expenses. It is alleged that the ill-fated Jeep was owned by Kalyan Singh Rana and it was duly insured with the petitioner. The claimants have claimed Rs. 6,68,000/- as compensation along with interest @ 15% per annum from the opposite parties.

The owner of the vehicle filed his written statement and denied the allegations made in the claim petition for want of knowledge. It was admitted that on the fateful day, his jeep met with an accident, but the driver was not at fault, rather the accident took place due to bad condition of road at the place of accident. The driver was having a valid driving licence and all necessary papers. The insurance of the vehicle has been admitted and it has

been stated that the liability, if any, to pay compensation lay upon the insurer.

The Insurance Company-petitioner also filed his written statement and denied the allegations made in the claim petition. It has been stated that the quantum of compensation is excessive and the owner of the vehicle was not having valid papers of the vehicle and the jeep was being driven in violation of traffic rules and against the policy conditions.

The learned Tribunal framed as many as four issues in the case. Issue No.1 related to rash and negligent driving by the driver of the jeep in question. Issue No.2 related to holding of valid driving licence by the driver of the Jeep. Issue No.3 related to valid papers of the vehicle at the time of accident and Issue no.4 related to relief.

The claimants have filed F.I.R. of the incident, Post Mortem Report etc. including income certificate certified by Tahsildar in documentary evidence and have examined Laxmi Dutt Dwivedi as P.W.1 and Gokulanand s/o Hira Ballabh as P.W. 2. O.P.No.1 owner has examined himself Kalyan Singh as D.W.1 and has filed permit of the vehicle, copy of insurance cover-note, copy of Form No. 34, registration certificate, certificate of payment of additional tax, etc. The Insurance Company-petitioner has examined D.W. 2 C.S.Koranga and D.W.3 Vinod Kumar Sanguri and filed investigation report of the surveyor and other documents.

After considering the entire evidence on record, the Tribunal found on Issue No.1 that the accident in question was the result of rash and negligent driving by the driver of the ill-fated Jeep thereby the deceased sustained grievous injuries and consequently died in the course of his treatment. The learned Tribunal took up Issue Nos. 2 and 3 together. On Issue nos. 2 and 3, which have been framed on the pleadings of the insurer-

appellant, it has been held on the basis of the evidence before the Tribunal that the driver of the vehicle was holding a valid driving licence and the vehicle was duly insured with the appellant-insurance company and it was observed that the insurer failed to lead any evidence to show that the driver was not having valid driving licence and valid papers of the vehicle. On issue No.4, the learned Tribunal has found deceased Gokulanand was the son of the claimants, who was unmarried at the time of his accidental death. The age of the mother has been mentioned to be 60 years in the extract of Family Register, though in the claim petition the age of the mother has been mentioned as 65 years. Taking into consideration the age of the mother, multiplier of 08 was fixed for computing the compensation amount. In this case, the claimants have filed income certificate, which was obtained after the death of the deceased from the Tahsildar. The learned Tribunal has not accepted this certificate because no ground was mentioned to certify the income of the deceased. The learned Tribunal further held that the deceased was unemployed, therefore, as per provisions of Second Schedule of Section 163-A of the Act, the income was held to be Rs. 15,000/- per annum and after deducting 1/3rd from it, it was held that the loss of dependency was Rs. 10,000/- per annum and accordingly, compensation was assessed at Rs. 80,000/- by applying multiplier of 8. In addition, amounts of Rs. 2,000/- towards funeral expenses and Rs. 5,000/- towards loss of consortium were awarded. Ultimately, the claim petition was decreed for Rs. 87,000/- favour of the claimants and against the insurance company.

I have learned counsel for the parties and have thoroughly gone through the entire material on record including the lower court record.

The main ground of challenge raised in this appeal by the appellant is that the driver of the ill-fated Jeep was not having a valid driving licence. The learned Tribunal had dealt with the point

of driving licence at pages 4 and 5 of its judgment. It comes out on the basis of the evidence led by the petitioner-insurance company that the Insurance has failed to show that the driver Ranjeet Singh, who is said to be driving the ill-fated jeep, was not having a valid driving licence. It was open to the insurance company to examine some responsible person of the Regional Transport Office Haldwani, who could be the best witness to depose that the driver Ranjeet Singh was not having a valid driving licence. But it has not been done. It is interesting to note that D.W.2 C.S.Koranga, who is the witness of the petitioner and who prepared the survey report (paper no. 27-C), could not dare say that the driver was not having a valid driving licence. On the other hand, the learned Tribunal on the basis of record found that the driver was having valid driving licence to drive light motor vehicle, motor vehicles and heavy goods for the period 24-4-2003 to 24.4.2006. Moreover, the Apex Court has held in paragraph 110(iii) of the judgment in the case of ***National Insurance Co. Ltd. Vs. Swaran Singh*** reported in [(2004) 3 Supreme Court Cases, 297], as under:-

> ***"The breach of policy condition, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence of disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to driver at the relevant time."***

Taking into consideration, the view of the Apex Court, I find that the petitioner has failed to discharge its burden. Moreover, the surveyor's report 27-C filed by the insurance Company, at point no.3 of the result, it was mentioned that all the documents of the vehicle were legal and complete. Having considered all the aspect of the matter from all the four corners, I am not inclined to accept that the finding recorded by the learned Tribunal that the driver was having a valid driving licence is in any way illegal or erroneous.

No other point was urged or argued before me in this appeal.

So far as the cross-objection filed by the claimant-respondent is concerned, they have prayed for enhancing the compensation amount by stating that the income of the deceased was Rs. 5,000/- per month. The claimants have not filed any affidavit in support of their contention raised in the cross-objection and have not led any evidence in support thereof. In his testimony, P.W.1 Laxmi Dutt Dwivedi has stated that his son used to earned Rs. 5,000/- per month from gardening and by growing herbs. The claimants have totally failed to bring on record any such evidence, which could indicate that the deceased was doing self-employment. The learned Tribunal has rightly discarded the contention of the claimants that the deceased was an earning member on the ground that the income certificate filed on record was obtained from Tahsildar after the death of the deceased. I have perused the income certificate (Paper No. 24-C), wherein it was certified by the Patwari concerned that the income of the deceased was assessed at Rs. 5,000/-. He has not disclosed the basis of income. It appears that for the purposes of claim petition, this document was obtained. I am not inclined to accept that the deceased Gokulanand Dwivedi was having independent source of income. Even if it may be presumed that the deceased was engaged in the work of gardening and growing of herbs, the income derived there-from is not at all

affected. The father of the deceased P.W.1 has not said as to how the income from the said business has now ceased. It is but natural that in case any person is doing private business, there must be some document indicative of such business or profession. In my view, the learned Tribunal has rightly taken the aid of Second Schedule of Section 163-A of the Act while computing the income of the deceased. Taking into consideration the entire material on the point of loss of dependency, I find that the compensation awarded by the Tribunal is just and proper. There is no merit in the cross-objection filed by the claimant-respondents.

In the result, the appeal as well as cross-objection has no force and deserves to be dismissed.

The appeal is dismissed. Cross-objection filed by the claimant-respondents is also dismissed. The impugned award dated 24-10-2005 is upheld. No order as to costs.

The amount is deposit with this Court, if any, be remitted to the Motor Accident Claims Tribunal Pihoragarh for being paid to the claimants.

(B.S.Verma, J.)

RCP